Filed 10/26/10 Estate of Jackson v. Branca CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

| | |
|---|---|
| ESTATE OF MICHAEL JOSEPH JACKSON, Deceased<br><br>JOSEPH JACKSON,<br><br>Petitioner and Appellant,<br><br>v.<br><br>JOHN BRANCA et al., SPECIAL ADMINISTRATORS OF THE ESTATE OF MICHAEL JACKSON,<br><br>Objectors and Respondents.<br><br>KATHERINE JACKSON,<br><br>Respondent | B220404<br><br>(Los Angeles County Super. Ct. No. BP117321) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Mitchell Beckloff, Judge. Affirmed.

Brian Oxman and Maureen Jaroscak, for Plaintiff and Appellant Joseph Jackson.

Kinsella Weitzman Iser Kump & Aldisert, Howard Weitzman and Randall Whattoff; Hoffman, Sabban & Watenmaker, Paul Gordon Hoffman, Jeryll S. Cohen and Geraldine A. Wyle, for Defendants and Respondents John Branca and John McClain, as Special Administrators of the Estate of Michael Joseph Jackson.

Loeb & Loeb and Adam F. Streisand, for Defendant and Respondent Katherine Jackson.

Sacks, Glazier, Franklin & Lodise, Margaret G. Lodise, Guardian ad Litem, for the Children of Michael Joseph Jackson.

---

## INTRODUCTION

Appellant Joseph Jackson filed an objection to the appointment of Respondents John Branca and John McClain as executors of the Estate of Michael Joseph Jackson. The trial court concluded that Appellant was not an "interested party" within the meaning of Probate Code section 48 and therefore lacked standing to object. Joseph Jackson appeals the ruling. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Events Prior to Hearing on Joseph's Objection to Appointment of Executors

Michael Jackson (Jackson) died on June 25, 2009. He was survived by his father, Joseph Jackson (Joseph), his mother, Katherine Jackson (Katherine)[1] and his three children. Four days after Jackson's death, Katherine and Joseph filed a Petition for Letters of Administration alleging that Jackson died intestate and seeking Katherine's appointment as administrator of his estate. The probate court temporarily appointed Katherine as special administrator and set a hearing date for the final issuance of letters of administration.

Shortly thereafter, John Branca and John McClain filed a Petition for Probate of Will and Letters Testamentary, which included a document that purported to be Jackson's last will and testament. The will directed that Branca and McClain were to serve as executors of the Jackson estate, which was left entirely to the Michael Jackson Family Trust. The beneficiaries of the Trust included Jackson's children, his mother and various charities. In addition to the Petition for Probate of Will, Branca and McClain filed an ex parte petition seeking to replace Katherine as special administrator of the estate. Katherine and Joseph opposed the petition.

---

[1] Because the parties share the same last name, we refer to Joseph Jackson and Katherine Jackson by their first names for the sake of clarity only. No disrespect is intended. (See, e.g., *In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1073, fn. 1.)

On July 6, 2009, the probate court appointed Branca and McClain to replace Katherine as special administrator and scheduled a hearing for August 3, 2009, to determine who should administer the Jackson estate on a permanent basis. At the August hearing, Katherine withdrew her Petition for Letters of Administration and the court admitted the will to probate. The court set a trial setting conference date of November 10, 2009, for Branca and McClain's appointment as executors and their Petition for Letters Testamentary.

The day before the trial setting conference, Joseph filed an objection to Branca and McClain's appointment as executors. The objection alleged, among other things, that Branca and McClain had engaged in a wide array of wrongful conduct (including fabricating Jackson's will) and had multiple conflicts of interest that barred them from serving as executors. In addition to his objection, Joseph filed a motion for family allowance asserting that he was a dependent parent who had been supported by Jackson "for many years." The motion was accompanied by a declaration from Joseph's attorney stating that, immediately prior to his death, Jackson had been providing Joseph approximately $50,000 to $60,000 in monthly support payments.

**B. The November 10, 2009 Hearing**

At the November 10, 2009 hearing, Katherine announced that she was withdrawing her objection to Branca and McClain's appointment as executors, explaining that it was unnecessary to "spend the estate's money on these disputes" and "fe[lt] it's high time that the fighting end." Katherine and the guardian ad litem for Jackson's children[2] also asserted that Joseph lacked standing to object to the executors because he had no interest in the estate.

In response, Joseph argued that although he was not a beneficiary under Jackson's will, he nonetheless qualified as an "interested party" within the meaning of Probate Code section 48. First, he contended that, as Jackson's father, he had a priority for

[2] The court appointed the guardian ad litem for Jackson's children on August 10, 2009.

appointment as an administrator or executor. Second, Joseph alleged that his petition for a family allowance constituted a "claim" against the estate. The court, however, rejected both arguments, noting that: (1) Joseph did not qualify for "a priority for appointment" because he was not entitled to any portion of the estate, and (2) Joseph's petition for a family allowance did not provide a sufficient "interest" to object to the executors because the court, and not the executors, was responsible for determining whether Joseph was entitled to an allowance.

Joseph's counsel disagreed with the court's analysis, asserting that "someone who has the right to file a family allowance falls within the claimant against the estate, and therefore is an interested party." Counsel further argued that, at a minimum, the probate court should set an evidentiary hearing on the standing issue which, according to counsel, involved factual disputes that could not "be decided on argument of counsel." When the trial court asked counsel to identify the "factual dispute," counsel stated "we say we have a claim against the estate" and asserted that the executors had discriminated against Joseph by failing to pursue a petition for family allowance on his behalf. In addition, counsel alleged that "[Joseph] has been harmed in the extent of he's going to be filing the will contest, and where the property devolves after that is a matter of evidentiary determination."

The court, however, maintained that Joseph had failed to demonstrate the necessity for an evidentiary hearing or that his petition for a family allowance gave him standing to object to the appointment of executors, stating: "I don't know where the evidentiary dispute is. . . . And I'm not sure how he is affected at all by the appointment of Branca and McClain as executors. . . . [H]e has his right to bring a family allowance petition, and he's done that, and we've set it for hearing. He can get an order from the court ordering the executors to pay the family allowance. [¶] I'm not sure that he has any other interest in this estate. Because even if the will is invalidated and the trust is invalidated, he has three children and under the laws of intestacy, those children would take . . . I cannot figure out how Joe Jackson is affected by the decision to appoint [Branca and McClain as executors]."

The Court then admitted Jackson's will to probate, appointed Branca and McClain as executors and denied Joseph's objection on standing grounds, explaining:

> I'm going to overrule the objections. I'm going to find that [Joseph] has no standing. I don't think that Mr. Jackson falls into any category in subdivision (a) of 48. And assuming he did, I think under the particular circumstances of this case and the context of these proceedings at subdivision (b) that [Joseph] does not have standing. [¶] It doesn't mean that [Joseph] doesn't have standing for other things that he may wish to do. Clearly [Joseph] has standing to bring his family support petition. . . . But I think section 48, subdivision (b), tells me that each and every time that the issue comes up, the court may be required to look at the circumstances and . . . determine whether or not there's a real interest that is being asserted. . . . [¶] . . . [¶] [T]he circumstances . . . are . . . not disputed. You have a family support petition that's been filed. I have a will that's been admitted to probate. There's a trust. I have named executors in the will. I have named beneficiaries of the trust. . . . [Joseph] ultimately takes . . . none of this estate.

Joseph timely appealed the court's dismissal of his objection.

### C. Events Following The November 10, 2009 Hearing

Six months after the probate court denied Joseph's objection, Joseph withdrew his petition for a family allowance.[3] The withdrawal notice states that "Mr. Joseph Jackson[] withdraws his Petition for Family Allowance . . . . Petitioner will pursue his claims in favor of a wrongful death proceeding." The same day, Joseph filed a wrongful death suit in federal court against Jackson's treating physician and the physician's employers.[4] To date, Joseph has not contested Jackson's will nor has he filed any claim against the estate.

---

[3] Respondents have filed a motion requesting that we take judicial notice of Joseph's withdrawal of his petition for a family allowance and a copy of the probate court docket. The motion is granted. (See Evid. Code, § 452, subd. (d)(1) ["Judicial notice may be taken of . . . records of . . . any court of this state"].)

[4] Joseph has filed a motion requesting that we take judicial notice of the federal complaint filed against Jackson's treating physician. The motion is granted. (See Evid. Code, § 452, subd. (d)(2) ["Judicial notice may be taken of . . . records of . . . any court of record of the United States"].) However, we "take judicial notice only as to the existence of the complaint, not as to the truth of any of the allegations contained in it." (*Ross v. Creel Printing & Publishing Co., Inc.* (2002) 100 Cal.App.4th 736, 743.)

## DISCUSSION

Joseph raises three issues on appeal. First, he asserts that, contrary to the probate court's conclusion, he qualifies as an interested party within the meaning of Probate Code section 48 and therefore had standing to object to the appointment of the executors. Second, Joseph contends that the probate court erred in refusing to hold an evidentiary hearing on the standing issue. Third, Joseph argues that, regardless of whether he had standing, the court had a mandatory duty to independently investigate the factual allegations underlying his objection.

### A. The Court Did Not Err in Concluding that Joseph was not an "Interested Party" Within the Meaning of Probate Code section 48

Joseph contends that the probate court erred in determining that he did not have a sufficient interest to satisfy Probate Code section 48's standing requirement.

*1. Legal Framework*

Under Probate Code section 1043, only "interested person[s]" may "appear and make a response or objection in writing at or before [a probate] hearing." (See generally, Probate Code, §§ 1040, 1043[5] [directing that "interested party" may appear and make a response or objection at probate hearing unless "the statute that provides for the hearing of the matter prescribes a different procedure"].) Section 48 defines "interested person" as follows:

> (a) Subject to subdivision (b), "interested person" includes any of the following:
>
> (1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.
> (2) Any person having priority for appointment as personal representative.
> (3) A fiduciary representing an interested person.
>
> (b) The meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

[5] Unless otherwise indicated, all further statutory citations are to the Probate Court.

Standing under section 48 is "a fluid concept." (*Arman v. Bank of America* (1999) 74 Cal.App.4th 697, 702 (*Arman*).) "[S]ubdivision (a) provides a nonexclusive list of recognizable interests, providing the court with the authority to designate as an 'interested person' anyone having a property right in or claim against an estate which may be affected by the probate proceeding. On the other hand, section 48, subdivision (b) broadly permits the court to determine the sufficiency of a party's interest for the purposes of each proceeding conducted." (*Estate of Maniscalco* (1992) 9 Cal.App.4th 520, 523-524 (*Maniscalco*); see also *Estate of Davis* (1990) 219 Cal.App.3d 663, 668 (*Davis*).) In determining whether a party is sufficiently interested to intervene under subdivision (b), the probate court must evaluate the "nature of the proceeding . . . and the parties' relationship to the proceeding, as well as to the . . . estate[]." (*Arman, supra,* 74 Cal.App.4th at p. 703; see also *Maniscalco, supra,* 9 Cal.App.4th at p. 524 ["subdivision (b) requires [probate court] to evaluate the underlying policy considerations regarding a specific probate proceeding in determining whether the person or party is sufficiently interested to intervene"].) Thus, "a party may qualify as an interested person . . . for purposes of one proceeding but not for another." (*Davis, supra,* 219 Cal.App.3d at p. 668.)

The intent of the "interested party" requirement is to "prevent[s] persons with no interest from delaying the settlement of estate affairs." (*Estate of Maniscalco, supra,* 9 Cal.App.4th at p. 523.) Additionally, it "provide[s] the probate court with flexibility to control its proceedings to both further the best interests of the estate and to protect the rights of interested persons to those proceedings." (*Ibid.*; see also *Davis, supra,* 219 Cal.App.3d at p. 668 ["section 48 gives the trial court . . . flexibility in controlling probate proceedings"].)

*2. Standard of Review*

The parties disagree over the appropriate standard of review applicable to the probate court's ruling on the issue of standing. Respondents cite multiple decisions holding that "the determination of whether a party is an interested person pursuant to

Probate Code section 48 is subject to . . . the deferential abuse of discretion standard." (*In re Estate of Prindle* (2009) 173 Cal.App.4th 119, 126 (*Prindle*); see also *Arman, supra*, 74 Cal.App.4th at p. 702.) Joseph, however, contends that where the probate court denies standing without holding an evidentiary hearing or resolving a factual dispute, the de novo standard of review applies. Joseph cites no authority that supports this proposition and we find no merit in the argument.

As explained above, section 48 is intended to provide "the trial court . . . flexibility in controlling probate proceedings." (*Davis, supra,* 219 Cal.App.3d at p. 668.) To effectuate this purpose, the statute affords the probate court significant discretion in determining whether a party has a sufficient interest to intervene in a given probate proceeding. (*Prindle*, *supra*, 173 Cal.App.4th p. 126.) This discretionary authority exists whether a decision on standing is made with or without an evidentiary hearing. (See, e.g., *In re Kovacs' Estate* (1964) 227 Cal.App.2d 308, 312 [determination that allegations in pleadings failed to demonstrate sufficient interest to intervene in probate proceeding "rest[ed] very much in the discretion of the [trial] Court"].) Accordingly, we review the probate court's decision for abuse of discretion.

*3. The trial court did not err in concluding that Joseph was not an "interested person" within the meaning of section 48*

Joseph argues that there are three reasons why he qualifies as an "interested party" under Section 48. First, Joseph contends that, as Jackson's father, he has a "priority for appointment as personal representative." (See § 48, subd. (a)(2).) Second, he contends that his petition for a family allowance constitutes either a "property right in" or "claim against" the estate. (See § 48, subd. (a)(3).) Third, Joseph argues that he is a beneficiary of the estate as the result of a wrongful death lawsuit that he filed six months after the probate court dismissed his objection.

*a. Joseph does not have a "priority for appointment as personal representative"*

Joseph first argues that he is an "interested party" because, as the deceased's father, he "has a priority to be appointed the personal representative under Probate Code

section 8461(e)." However, Joseph does not qualify for a priority appointment because he is not entitled to any portion of Jackson's estate.

Section 48, subdivision (a)(2) states that an "interested person" includes "[a]ny person having priority for appointment as personal representative." Section 8461, in turn, enumerates the order of priority for appointment that applies to various categories of persons related to the decedent and lists "parents" as the fifth priority. (See § 8461, subd. (e).) The order of priority listed in section 8461, however, is qualified by Section 8462, which states "a relative of the decedent . . . has priority under Section 8461 only if one of the following conditions is satisfied: . . . (a) The surviving . . . relative is entitled to succeed to all or part of the estate. (b) The surviving . . . relative either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent." Therefore, unless Joseph is entitled to some part of Jackson's estate, he does not qualify for a "priority appointment."[6]

Joseph has not identified any scenario under which he would be entitled to a portion of Jackson's estate. Under the terms of Jackson's will, his entire estate is to go to the Michael Jackson Family Trust, of which Joseph is not a beneficiary.[7] Moreover, as Joseph conceded at the probate hearing, Jackson is survived by three children. Thus, as the probate court recognized, even if Jackson's will were successfully challenged,[8] the

---

[6] Joseph has never asserted that he is entitled to take under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to portion of Jackson's estate. As a result, we need not consider whether the circumstances described in section 8462, subdivision (b) apply here.

[7] Although the record does not contain a copy of the Trust, it indicates that a copy of the document was filed under seal in the probate court. During the probate hearing the court repeatedly stated that Joseph was not a beneficiary of the Trust and Respondents repeat that allegation in their appellate briefs. Joseph has never contradicted these assertions and we therefore treat them as true.

[8] It is unlikely that Jackson's will is subject to challenge at this point in the proceedings. Under Probate Code section 8270, any interested party may petition the

estate would devolve to Jackson's children under California's intestate statute. (See Probate Code, § 6402, subd. (a) [if decedent has no surviving spouse or domestic partner, "the entire intestate estate . . . passes as follows: (a) To the issue of the decedent . . . ."].) Because Joseph does not take under the will, nor would he be entitled to any portion of the estate under intestate succession, he cannot qualify for a "priority appointment."

*b. Joseph's petition for a family allowance does not establish that he is an interested party.*

Joseph next argues that his petition for a family allowance qualifies him as an "interested person" with standing to object to the executors. Section 48, subdivision (a)(1) states, in relevant part, that the term "interested person" includes any individual "having a property right in or claim against . . . the estate of a decedent which may be affected by the proceeding." In Joseph's view, his petition qualifies as a "property right in" or "claim against the estate." However, a petition for a family allowance does not constitute an "interest" in the estate within the meaning of subdivision (a)(1). Moreover, even if it did, the probate court did not abuse its discretion in concluding that, under Section 48, subdivision (b), Joseph's petition did not represent a sufficient interest to object to the executors' appointment.

Joseph's request for a family allowance does not constitute "a property right in" or a "claim against" Jackson's estate under Section 48, subdivision (a). Joseph's petition for an allowance was asserted pursuant to Section 6540, which states:

> (a) The following are entitled to such reasonable family allowance out of the estate as is necessary for their maintenance according to their circumstances during administration of the estate:
> (1) The surviving spouse of the decedent.
> (2) Minor children of the decedent.
> (3) Adult children of the decedent who are physically or mentally incapacitated from earning a living and were

---

court to revoke the probate of a will within 120 days after the will is admitted to probate. The court probated Jackson's will on August 3, 2009. The probate court docket indicates that, to date, no party has petitioned the court to revoke the probation of the will and the time to do so has now expired.

> actually dependent in whole or in part upon the decedent for support.
>
> (b) The following may be given such reasonable family allowance out of the estate as the court in its discretion determines is necessary for their maintenance according to their circumstances during administration of the estate: [¶] . . . [¶]
>
> (2) A parent of the decedent who was actually dependent in whole or in part upon the decedent for support.

The statute "differentiates between classes of claimants covered by subdivision (a) – who 'are entitled' to a family allowance – and those covered by subdivision (b) - who 'may be given' an allowance." (*Estate of Herrera* (1992) 10 Cal.App.4th 630, 636.) Joseph's petition is predicated on his alleged status as a "dependent parent," and therefore falls within subdivision (b).

The plain language of subdivision (b) demonstrates that Joseph does not have "an 'entitlement' or 'right' to an allowance." (*Herrera, supra,* 10 Cal.App.4th at p. 636.) Rather, the subdivision makes clear that if Joseph demonstrates that he was dependent on Jackson for support, the court may, in its discretion, award an allowance. Thus, "[t]he only right unquestionably belonging to [Joseph] was the right to apply for an allowance (citation). . . . Unless and until granted one by the probate court, [he] had neither an entitlement (citation) nor a vested right (citation) to an allowance." (*Ibid.*) Because Joseph is not entitled to a family allowance, his petition for an allowance cannot be construed as a "property right" against the estate.

Nor does it qualify as a "claim" against the estate. "In this state the courts early recognized . . . that 'claim,' as used in probate acts, has reference to debts or demands against a decedent which might have been enforced during his lifetime, . . . '[t]his definition . . . [does] not include a claim for a family allowance.'" (*In re Estate of Cutting* (1916) 174 Cal. 104, 108.) Since these early decisions, our courts have continued to recognize that "[t]he word 'claim' in the Probate Code 'only has reference only to such debts or demands against the decedent as might . . . have been enforced against him in his lifetime by personal actions for the recovery of money, . . ." (*Newberger v. Rifkind*

(1972) 28 Cal.App.3d 1070, 1077; see also *Borba Farms, Inc. v. Acheson* (1988) 197 Cal.App.3d 597, 602.) Because Joseph could not have asserted a claim for a family allowance during Jackson's lifetime, it does not qualify as a claim against the estate within the meaning of the Probate Code.[9]

Even if we assume that a petition for a family allowance constitutes a property right in or claim against the estate, and therefore qualifies as a cognizable interest under Section 48, subdivision (a), the probate court's ruling was appropriate under section 48, subdivision (b). As explained above, although subdivision (a) lists various categories of persons who may qualify as an "interested party," their standing to participate in any given probate proceeding is "subject to subdivision (b)," which "broadly permits the court to determine the sufficiency of a party's interest for the purposes of each proceeding conducted." (*Maniscalco, supra*, 9 Cal.App.4th at pp. 523-524).

When explaining the basis for its ruling, the probate court stated: "I don't think that Mr. Jackson falls into any category in subdivision (a) of 48. And assuming he did, I think under the particular circumstances of this case and the context of these proceedings, at subdivision (b), that [Joseph] does not have standing." The court's ruling that Joseph's petition for an allowance did not provide a sufficient interest to object to the executors was predicated on the fact that the court, and not the executors, was responsible for determining whether Joseph was entitled to an allowance. Specifically, the court explained "what difference [does the executor] make to [Joseph], because [he] can file a petition for family allowance which he has done. He clearly has standing to petition the court for a family allowance. If he's awarded a family allowance and then thought that there was malfeasance by Mr. Branca and Mr. McClain, he may have standing to . . . file a petition to remove them." Thus, the court reasoned that, regardless of who served as executor, and regardless of whether they harbored animus toward Joseph, his interest in

---

[9] At one point during the probate hearing, Josephs' counsel contended that Jackson's monthly support payment to Joseph constituted a "contract to support him . . . which would be a creditor's claim." Joseph has not raised this issue on appeal and, as a result, we need not review it. Moreover, the record indicates that he has never filed a creditors' claim against the Jackson estate.

an allowance was adequately protected by the court. We find no abuse of discretion in the court's reasoning or its ruling.[10]

*c. We need not consider whether Joseph's subsequent filing of a wrongful death suit created an interest in the estate*

Joseph argues for the first time in his reply brief that he qualifies as an interested party as the result of a wrongful death suit that he filed against Jackson's physician in June of 2010, which was six months after the court ruled in this matter. Specifically, Joseph argues that, as a parent who was dependent on the decedent, he is a "'beneficiary' of the Administrators, who are the . . . 'trustees' for a wrongful death claim which is administered by the estate." In support, Joseph cites case law indicating that, in the event an administrator litigates a wrongful death claim, it acts as a trustee for the heirs who are authorized to recover for the wrongful death, which includes dependent parents. (See Code Civ. Proc, § 377.60; *Cross v. Pacific Gas & Elec. Co*. (1964) 60 Cal.2d 690, 694 [where personal representative asserts wrongful death action, it acts as "statutory trustee for the heirs"].) Joseph's argument appears to rely on the following chain of assumptions: (1) the wrongful death suit that Joseph filed is an asset of the estate, (2) the Administrators have a duty to litigate the suit on behalf of Jackson's heirs, (3) as a dependent parent, Joseph is a potential beneficiary of the suit, and (4) he is therefore entitled to succeed to a portion of the "wrongful death estate asset." Regardless of whether Joseph's argument has any merit, there are at least four reasons why it would be improper for us to consider the claim at this stage in the proceedings.

---

[10] We further note that six months after the probate court ruled in this matter, Joseph withdrew his petition for a family allowance. Therefore, even if we were to assume that Joseph's petition provided standing at the time he filed his objection to the executors, any such standing would have been lost when he withdrew the petition. (See *Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 916-917 ["plaintiff may lose standing even where an actual controversy originally existed 'but, by the passage of time or a change in circumstances, ceased to exist'"]; *Californians For Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 233-234 ["for a lawsuit properly to be allowed to continue, standing must exist at all times . . . and not just on the date the complaint is filed"].)

First, under "established principles of appellate practice . . . an appellate court is confined in its review to the proceedings that took place in the court below and are brought up for review in the record on appeal. [Citation.] Thus, '[m]atters occurring after entry of judgment are ordinarily not reviewable: The appeal reviews the correctness of the judgment or order as of the time of its rendition, leaving later developments to be handled in subsequent litigation.' [Citation.] As the appellate court in one early case put it: . . . 'If the judgment is affirmed such affirmance is as of the date at which it was rendered. . . . It is therefore manifest that error on the part of the inferior court cannot be predicated by reason of any matter occurring subsequent to its rendition of the judgment, and it is equally evident that it would be irrelevant for the appellate court to entertain any evidence of such subsequent matters.' [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 706.) Under these well-established principles, Joseph's filing of a wrongful death suit, which occurred six months after the probate court dismissed his objection, is irrelevant to this appeal.

Second, our courts have recognized that "a defect in standing cannot be cured by postfiling events." (*Coral Const., Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 12, fn. 6.) Therefore, if Joseph lacked standing at the time he filed his objection to the executors, that defect cannot be remedied by an event that occurred subsequent to his filing of the objection. Joseph concedes that his wrongful death action was filed long after he filed his objection to the appointment of the executors. Therefore, the suit may not be considered in reviewing the probate court's determination of standing.

Third, the record demonstrates that Joseph never presented his wrongful death argument to the probate court. "It is fundamental that a reviewing court will not consider issues not raised in the trial court." (*Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148, 159; see also *Estate of Raphael* (1953) 115 Cal.App.2d 525, 529 ["No rule is better settled than the one that 'questions not raised in the trial court will not be considered on appeal'"].) This rule "is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law." (*People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468.) In this case, neither the probate

court nor the Respondents were given any opportunity to consider and respond to this argument. It would therefore be inappropriate for us to consider the issue for the first time on appeal.

Joseph disagrees with our assertion that he failed to present the issue to the probate court. Although he appears to concede that he did not actually raise the argument at the probate hearing, Joseph contends that he presented facts showing that he was a dependent parent and the court therefore should have inferred the argument. In other words, Joseph argues that because he alleged he was a dependent parent, and because a dependent parent is entitled to recover from a wrongful death suit, the probate court should have considered, *sua sponte,* whether he might be a beneficiary of the estate as the result of a (then unfiled) wrongful death suit. Joseph's argument misconstrues the role of courts, which is to evaluate "'legal argument . . . on the points made.'" (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) A "court is not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) The probate court had no duty to anticipate or consider a legal argument that was never presented to it.

Finally, even if Joseph had raised the wrongful death argument in the probate court, he did not raise the argument in his opening appellate brief. "[I]t is well settled appellate courts do not consider issues first presented in an appellant's reply brief." (*Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1312-1313). "Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence, the rule is that *points raised in the reply brief for the first time will not be considered*, unless good reason is shown for failure to present them before." (*People v. Adams* (1990) 216 Cal.App.3d 1431, 1441, fn. 2.)

Joseph has made no effort to show why he failed to present this argument at any point prior to the filing of his reply brief. His motion for judicial notice, which includes a copy of his wrongful death complaint, alleges that "Mr. Jackson's rights as a 'statutory

beneficiary' of a wrongful death estate asset existed on November 10, 2009." Thus, by his own admission, Joseph could have raised the argument at the probate hearing or, at the least, in his appellate opening brief, which was filed in May of 2010. Accordingly, we need not review the issue. (See *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 214 ["[W]e need not consider new issues raised for the first time in a reply brief in the absence of good cause, and [defendants have] not shown any. [Citation.]"].)[11]

### B. Joseph was not Entitled to an Evidentiary Hearing on the Issue of Standing

Joseph argues that the probate court erred when it denied his request to hold an evidentiary hearing on the issue of standing. According to Joseph, it was improper to dismiss him from the proceedings without providing an opportunity to present evidence that he was sufficiently interested to intervene. Because the probate court's ruling did not

---

[11] Although we need not address the merits of Joseph's "wrongful death suit" argument, it appears to lack merit. In sum, Joseph asserts that the wrongful death action is an asset of the estate and, as a dependent parent of the deceased, he is a beneficiary of "the wrongful death estate asset." However, the Law Review Commission Comment to California's wrongful death statute, codified at Code of Civil Procedure section 377.60, states that "[u]nlike other provisions of this chapter that relate to causes of action belonging to the decedent, this article relates to a cause of action for the decedent's wrongful death, which belongs not to the decedent, but to the persons specified in this section. Thus, the cause of action is not property in the estate of the decedent, and the authority of the personal representative to assert the cause of action is for administrative convenience only and is not for the benefit of creditors or other persons interested in the decedent's estate." This comment, which "is entitled to substantial weight in construing [the] statute[]," (*Di Grazia v. Anderlini* (1994) 22 Cal.App.4th 1337, 1347) [superseded by statute on other grounds, as stated in *Noggle v. Bank of America* (1999) 70 Cal.App.4th 853, 858-859]), appears to contradict Joseph's contention that the wrongful death action constitutes an asset of the estate. Moreover, in this case, the estate has not even chosen to pursue a wrongful death action. Joseph filed the suit and he has pointed to no authority indicating that the estate has a duty to litigate the matter on his behalf. Although the wrongful death statute permits a personal representative of the decedent to assert a wrongful death claim on the heirs' behalf, it does not require that it do so. (See Code Civil Proc., § 377.60 ["A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by . . . the decedent's personal representative.)

turn on the resolution of any factual dispute, we conclude that it was not required to hold an evidentiary hearing.

"It is well settled in California that a court may require proof of the contestant's interest in the estate and of the right to contest before proceeding with the trial of the contest itself." (*Estate of Powers* (1979) 91 Cal.App.3d 715, 719; see also *Estate of Plaut* (1945) 27 Cal.2d 424, 425-426 ["the court may require proof of the contestant's interest before proceedings with the trial of the contest"].) The general rule is that if a party alleges an interest in the estate that would satisfy the standing requirement, the probate court should hold a hearing to allow the party to prove the alleged interest. (See *Estate v. Lind* (1989) 209 Cal.App.3d 1424, 1435; *Garwood v. Garwood* (1866) 29 Cal. 514, 520.) The obvious corollary to this rule is that, if a party fails to allege an interest that would satisfy the standing requirement, the court need not hold an evidentiary hearing because the hearing would serve no purpose. (See *Estate of Plaut, supra*, 27 Cal.2d at p. 426 ["Although the right to ask the court for an adjudication of his claim to the estate should be denied a person whose interest 'has not even the appearance of validity or substance' [citation], it should not be denied a person who, even though he may ultimately not receive any part of the estate, has at least established a prima facie interest in that estate"]; *Lind*, *supra*, 209 Cal.App.3d at p. 1435.)

Neither of the alleged "interests" that Joseph raised during the probate hearing involved a factual dispute that might have been resolved at an evidentiary hearing. First, as explained above, Joseph failed to make any showing that he was entitled to succeed to a portion of the estate and, therefore, he could not qualify for an appointment priority. Second, his petition for a family allowance was, as a matter of law, not a "property right in" or "claim against" the estate.

Joseph, however, argues that even if the two interests he identified did not involve a question of fact, the court should have held an evidentiary hearing based on his allegation that he might identify additional claims against the estate that were not articulated during the November hearing. We are unaware of any authority that requires a probate court to hold an evidentiary hearing based solely on a party's unsupported

allegation that it might identify a claim against the estate at some future point in time.[12] Rather, the case law makes clear that "the right to ask the court for an adjudication of his claim to the estate should be denied a person whose interest 'has not even the appearance of validity or substance[.]'" (*Estate of Plaut, supra*, 27 Cal.2d at p. 426.) Joseph's mere allegation that he might discover a valid claim was insufficient to require the court to hold further hearings on the matter.[13]

### C. The Trial Court did not Have an Independent Mandatory Duty to Investigate the Factual Allegations in Joseph's Objection

Finally, Joseph contends that, even if he does not qualify as an interested person within the meaning of Section 48, the court had an independent, mandatory duty to review the factual allegations underlying his objection to the executors. In Joseph's view, the court was required to "consider the objections" regardless of whether "[he] was a stranger or a person vitally interested in the proceedings." We disagree.

The primary authority Joseph cites in support of his argument is *Estate of Kovac, supra,* 227 Cal.App.2d 308, which includes language stating that "if the court sees fit to

---

[12] Joseph also contends that the court erred in requiring him to make an offer of proof on standing before proceeding with an evidentiary hearing. Joseph cites no authority suggesting that the court's conduct in this case was improper. Section 48 is intended to provide the probate court significant "flexibility to control its proceedings to both further the best interests of the estate" and "prevent[s] persons with no interest from delaying the settlement of estate affairs." (*Maniscalco*, *supra*, 9 Cal.App.4th at p. 523.) By requiring Joseph to demonstrate that there were material facts which could be established at a hearing, the court was merely ensuring that there was an adequate justification for the additional proceedings, thereby avoiding unnecessary costs and delays.

[13] Joseph also appears to argue that the trial court's decision to dismiss his objection without holding an evidentiary hearing violated the due process clause, which requires "some form of hearing . . . before an individual is finally deprived of a property interest." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) Joseph has failed to identify any "property interest" of which he was deprived as the result of the dismissal of his objections to the executors. Indeed, the entire basis of the court's decision was that Joseph had no interest – let alone a property interest – that could be affected by the executors.

act upon the motion of any person whatsoever and finds grounds for removing the administrator, the removal is not erroneous merely because the moving party was not a 'person interested.'" (*Id.* at p. 311.) *Kovacs* merely acknowledges that, under the Probate Code, the trial court has the inherent authority to remove the executor on its own motion. (*Ibid*. [citing Probate Code, § 8500, subd. (b)].) The fact that the court has discretionary authority to remove an executor on its own motion does not mean that it has a mandatory duty to review an objection asserted by a party who lacks standing to participate in the probate proceeding.

If accepted, Joseph's argument would eviscerate the purposes of the "interested person" requirement, which are to "prevent[s] persons with no interest from delaying the settlement of estate affairs" and to "provide the probate court with flexibility to control its proceedings to both further the best interests of the estate and to protect the rights of interested persons to those proceedings." (*Maniscalco, supra*, 9 Cal.App.4th at p. 523.) The facts of this case are illustrative. Several of the beneficiaries of the estate, including Katherine and Jackson's surviving children, had an opportunity to evaluate the allegations in Joseph's objection and decided to approve the executors because they believed it was in the best interest of the estate. Under Joseph's theory, the probate court was required to ignore the beneficiaries' stated desires and hold an evidentiary trial to resolve allegations that were asserted by a party with no interest in the estate. That is the very outcome that Section 48 was designed to prevent.

## DISPOSITION

The probate court's judgment dismissing Joseph's objection to the appointment of the executors is affirmed. Respondents are awarded their costs on appeal.

ZELON, J.

We concur:

WOODS, Acting P.J.

JACKSON, J.